

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

A.G., a minor child; et al.,

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Plaintiffs

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vs.

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Case No: 2:05-CV-1090-MEF

**AUTAUGA COUNTY BOARD OF
EDUCATION, et al.,**

*

*

Defendants.

**B.H., a minor child, by and through
his mother and next friend, D.S.**

*

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Plaintiff,

*

vs.

*

Case No: 2:06-CV-0393-MEF

**AUTAUGA COUNTY BOARD OF
EDUCATION, et al.,**

*

*

Defendants.

**PLAINTIFFS' RESPONSE TO MOTIONS TO STRIKE
EXHIBITS 36, 37, 38, AND 39 TO THE SUMMARY JUDGMENT RESPONSE**

COME NOW the plaintiffs, by and through counsel, and in response to the respective motions to strike Exhibits 36, 37, 38 and 39 to plaintiffs' response to summary judgment state as follows:

1. Defendants Butler and Cleveland request the Court strike Exhibits 36, 37, and 38 to the plaintiffs' response to summary judgment. However, the defendants, in their motion, fail to cite any legal basis or authority for the requested relief.

2. Defendants Butler and Cleveland request the Court strike Exhibit 39 to the plaintiffs' response to summary judgment. Again, defendants fail to cite any legal basis or authority for the requested relief.

3. Exhibits 36, 37, 38 are newspaper articles authored by Marty Roney based in part upon interviews with Mr. Butler and Ms. Cleveland.

4. Both Mr. Roney and Mr. Butler provided deposition testimony regarding the articles wherein neither individual indicated any recollection that Mr. Butler, nor anyone else, contacted the author reporting or suggesting errors, inaccuracies or misquotes in any of the three articles.

5. Because the defendants fail to cite any legal basis or authority for the articles being stricken from the summary judgment response, it is impossible to provide a legal response to the motion. Should the defendants offer a legal argument, citation or authority, plaintiffs can respond thereto.

6. Exhibit 39 is a Department of Human Resources document memorializing a report from Defendant Cleveland to Kevin Smith, an intake worker at DHR. The document was identified by current and former DHR employees in deposition testimony.

7. The defendants assert the document should be stricken because it was purportedly improperly produced by DHR. Defendants fail to cite any legal basis or authority for such request and due to the failure to cite such authority plaintiffs can only conclude the defendants seek exclusion because they do not like the contents of the document. The defendants do not contest the authenticity of the document. They can cite no legal authority for its exclusion and fail to offer any legal basis why their motion should be granted. Should defendants assert a legal basis, citation or authority for their motion, plaintiffs can respond thereto.

8. That the respective motions filed by the defendants are without merit and due to be

denied.

WHEREFORE THE PREMISES CONSIDERED, plaintiffs request the Court deny the motions to strike Exhibits 36, 37, 38 and 39.

Respectfully submitted on this the 15th day of March, 2007.

s/Robert D. Drummond, Jr.
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s/Michael J. Crow
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Certificate of Service

I hereby certify that a copy of the foregoing was served electronically on counsel for the defendants, Mark S. Boardman, Esq. and Katherine C. Hortberg, Esq., by filing the same electronically with the Clerk of the Court, United States District Court for the Middle District of Alabama, and Terry Wright, AIS 247561, Limestone Correctional Facility, Dorm 16, 28779 Nick Davis Road, Harvest, AL 35749-7009 by placing a copy of the same in the U.S. Mail postage prepaid and properly addressed on this the 15th day of March, 2007.

s/Robert D. Drummond, Jr.